

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	File No. SAT-T/C-20000323-00078
Lockheed Martin Corporation,)	
COMSAT Government Systems, LLC,)	File No. SAT-STA-20000323-00073
And COMSAT Corporation)	
)	
Applications for Transfer of Control of)	
COMSAT Corporation and its Subsidiaries,)	
Licensees of Various Satellite, Earth Station)	
Private Land Mobile Radio and Experimental)	
Licenses and Holders of International)	
Section 214 Authorizations)	

ORDER ON RECONSIDERATION

Adopted: July 1, 2002

Released: July 5, 2002

By the Commission:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration filed by Litigation Recovery Trust ("LRT") in the above-captioned proceeding in which the Commission authorized the merger of Comsat Corporation ("Comsat") and Lockheed Martin Corporation ("Lockheed Martin"). We also have before us a Petition for Clarification and Correction of Order and numerous additional motions and supplemental pleadings filed by LRT. Lockheed Martin, Lockheed Martin Global Telecommunications, LLC (formerly Comsat Government Systems LLC ("CGSI")) and Comsat, collectively referred to as ("Lockheed Martin"), oppose LRT's petitions and supplemental pleadings and motions.

2. For the reasons discussed below, we deny LRT's Petition for Reconsideration of the Commission's authorization of the Comsat-Lockheed Martin merger and all other relief that it seeks.

II. BACKGROUND

3. On September 15, 1999, the Commission granted applications for consent to transfer control of CGSI to Lockheed Martin and for consent to acquire Comsat stock as an "authorized carrier" under the Communications Satellite Act of 1962 ("Satellite Act").¹ At that

¹ Applications of Lockheed Martin Corporation, Regulus, LLC and Comsat Corporation for Consent to Transfer of Control of Comsat Government Systems, Inc. and of Regulus, LLC for Consent to Acquire Comsat Corporation Stock an Authorized Carrier. *Memorandum Order and Authorization*, FCC 99-237, 17 P & F 723 (Sept. 15, 1999) sub nom. *PanAmSat Corporation v. FCC, et.al.* Nos. 99-1384 and 99-1385, 2000 WL 621421, appeal was dismissed with partial vacatur (D.C. Cir. April 20, 2000) (grant by court of joint request for dismissal on the basis that the ORBIT Act mooted underlying complaints) (*Phase 1 Order*).

time, under the Satellite Act, no common carrier could own more than 50 percent of Comsat's stock.² Therefore the Merger Agreement detailed a two-step process for completing the merger. The Commission's September 15 *Phase I Order* approved the first phase of the proposed transaction. In that phase, a Lockheed Martin subsidiary, Regulus, acquired CGSI, a subsidiary of Comsat, in order for Lockheed Martin to become a common carrier. As a common carrier, Regulus received authorization from the Commission under the Satellite Act to purchase up to 49 percent of Comsat's stock.

4. Subsequently, the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act") was enacted on March 17, 2000. The ORBIT Act eliminated the ownership restrictions in the Satellite Act that prevented Lockheed Martin from acquiring control of Comsat.³ Comsat and Lockheed Martin thereafter applied for authority to complete the second phase of the proposed merger by transferring control of the remaining 51 percent of Comsat stock to Lockheed Martin through the process set forth in the Merger Agreement. On July 31, 2000, the Commission authorized the second phase of the proposed merger.⁴ The second phase of the merger was consummated by Comsat and Lockheed Martin on August 3, 2000.⁵

5. The only filing in response to the second phase application was made by LRT. LRT represents certain individuals and entities that have been pursuing claims unsuccessfully against Comsat over several years in various fora, including the Commission. The claims arise out of disputes over operation of a former Comsat subsidiary, BelCom, Inc.,⁶ of which one member of LRT was previously a director and owner.⁷ LRT filed a "*Petition for Protective Order*" in which

² 47 U.S.C. § 734.

³ ORBIT Act, 47 U.S.C. § 761 *et seq.*

⁴ Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station, private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations, *Order and Authorization*, File Nos. SAT-T/C-20000323-00078 *et al.*, FCC 00-277, 15 FCC Rcd 22,910, *Erratum*, 15 FCC Rcd 23,506 (2000) (*Phase II Order*).

⁵ Letter to the Secretary, Federal Communications Commission, from Raymond G. Bender, Jr., Counsel for Comsat Corporation, dated August 21, 2000.

⁶ Lockheed Martin sold BelCom to Weissker, Inc. BVI, a British Virgin Islands company, in late 2001.

⁷ LRT represents claims by William L. Whitely, Scott Robb, John T. Whitely and William H. Hallenbeck, and includes the Committee to Restructure the International Satellite Organizations ("CRISO") and BelCom Minority Shareholders and Claimants Committee ("BelCom Committee"). In 1998, Comsat successfully brought legal action in Delaware Chancery Court against a former defendant shareholder of BelCom, Scott Robb, who is one of those represented by LRT. The court found that Robb was in breach of fiduciary duty to BelCom by pursuing fraudulent claims against the company. *BelCom, Inc. v. Scott Robb*, Del. Civil Action No. 14663 (April 28, 1998), *aff'd. subnom. Scott Robb v. BelCom, Inc.*, 725 A.2d 443 (Jan. 20, 1999), rehearing denied (Feb. 11, 1999). In 2001, the Delaware Chancery court denied William Whitely's motion to vacate the 1998 *BelCom* decision and a sanctions *Order* issued February 21, 2001. *BelCom v. Robb*, Del. Ch. Case No. 14463, *Order*, August 21, 2001. A New York court has disbarred Scott Robb for conduct arising from actions against BelCom. *In re Robb*, N.Y. App. Div., October 23, 2001. And, the United States District Court for the Southern District of New York has (1) dismissed a Securities Act

it alleged that Comsat has committed various violations of the Satellite Act and requested imposition of a number of protective orders. LRT sought the protective orders to require Comsat to operate under specific procedures and restrictions that purportedly would prevent the behavior alleged by LRT to be illegal.

6. The Commission denied LRT's request for protective orders as procedurally defective and based on issues previously addressed by the Commission. It treated LRT's *Petition for Protective Order* as a late-filed comment that was procedurally defective absent a motion to accept a late-filed comment. The Commission nevertheless addressed and denied LRT's petition, finding that LRT repeated allegations of which the Commission previously disposed of by denying various LRT complaints and petitions in a 1998 *Consolidated Order*.⁸ The Commission also found that the issues raised by LRT were beyond the scope of the Comsat-Lockheed Martin transfer of control application.⁹

7. LRT raises a number of issues and allegations as a basis for reconsidering the Commission's decision to approve the Comsat-Lockheed Martin merger. First, LRT contends that the Commission was incorrect in finding that the *Petition for Protective Order* that LRT filed in response to the Comsat-Lockheed Martin merger application was procedurally defective. Second, LRT once again raises issues that the Commission previously addressed and rejected in its 1998 *Consolidated Order*. LRT argues that the Commission's reliance on the *Consolidated Order* was misplaced in rejecting its *Petition for Protective Order* because of LRT's then-pending court appeal of that decision.

8. LRT additionally raises other issues in the context of its various filings. It alleges that Comsat has (1) engaged in fraudulent billing activities through its subsidiary, ElectroMechanical Systems, Inc. ("EMS"), as demonstrated in court litigation, and (2) failed to notify and disclose to the Commission in its merger application the criminal and civil actions associated with those activities. LRT argues that the allegations it makes raise character issues with respect to Comsat's qualifications as a Commission licensee. It asks the Commission to reverse its denial of its *Petition for a Protective Order* and revoke its *Phase II Order* granting the Comsat-Lockheed Martin merger. LRT requests the Commission to inquire broadly as to disclosures made by Comsat since 1995 in applications and filings to determine if there has been further failure to disclose information or misrepresentation. It also generally requests the Commission to investigate past actions of Comsat and to determine whether Comsat has violated the Communications Act, Communications Satellite Act, Commission rules and policies, and other federal laws related to fraud and misrepresentation. LRT additionally requests the Commission to impose forfeitures on Comsat's officers and directors and prohibit them from serving as officers or directors in companies that hold FCC licenses. It asks the Commission to direct Comsat to rescind its BelCom, Inc. stock purchases and surrender all share certificates in BelCom, Inc. to that company's two founding shareholders. LRT also seeks the liquidation of Comsat assets with

claim brought by LRT against Comsat, *Whitely v. Comsat*, S.D.N.Y. *Order*, Case No. 00 Cir. 9401 (October 29, 2001); and (2) dismissed LRT's complaint against Comsat, that made various allegations under federal and state law. *Whitely v. Comsat*, S.D.N.Y., Case No. 00 Cir. 9401, *Memorandum and Order* (Sept. 24, 2001).

⁸ *Phase II Order*, 15 FCC Rcd at 22,918-19, para. 24, citing *In re matter of Comsat Corporation, et al.*, *Memorandum Opinion and Order*, FCC 97-422, 13 FCC Rcd 2714 (1998)(*Consolidated Order*); recon. denied 15 FCC Rcd 19,516 (2000).

⁹ *Id.*

proceeds placed in a Commission-administered fund to assist in the digital conversion of the small market, minority owned and public television stations and cable television systems. Finally, LRT raises other issues, which we will not consider here because they are clearly beyond the scope of this proceeding.¹⁰

9. Lockheed Martin opposes LRT's petitions and the relief requested by LRT. Lockheed Martin first maintains that the Commission correctly found in its *Phase II Order* that LRT's *Petition for Protective Order* was procedurally defective. Second, Lockheed Martin agrees with the Commission's conclusion in the *Phase II Order* that LRT's allegations were unsubstantial and beyond the scope of the transfer of control application. As for the character issues raised by LRT, Lockheed Martin contends that the matters described by LRT do not fall within the scope of issues the Commission will consider in determining whether a licensee maintains requisite character qualifications. Lockheed Martin argues that: (1) the Commission does not consider basic character qualifications outside the broadcast context in a transfer of control proceeding unless it has designated issues related to the transferor's qualifications for a hearing; and (2) that EMS's actions resulting in a court litigation plea agreement involved non-FCC related conduct of EMS and does not provide a basis for any Commission action against Comsat. Lockheed Martin also states that, while Comsat was under no obligation under Commission policies to report merely that it was subject to investigation by another government agency concerning non-FCC related matters, Comsat nevertheless reported the plea agreement to the Commission when it was accepted by the court. Finally, Lockheed Martin filed motions to strike various supplemental reply comments filed by LRT following the end of the pleading cycle under the Commission's rules. It alleges that LRT's pleadings represent a continuing campaign of harassment of Comsat by LRT and its confederates and that LRT is abusing Commission process in a manner that should no longer be tolerated.¹¹

III. DISCUSSION

10. We first address the procedural issues raised by LRT's filings in this proceeding. Next we address LRT's contention that we should have considered issues that were previously addressed and rejected in the Commission's 1998 *Consolidated Order*. Finally, we consider the issues that LRT has raised that are relevant to this proceeding and not previously addressed by the Commission.

A. Procedural Issues

11. There are two procedural issues before us: (1) whether the Commission properly held in the *Phase II Order* that LRT's "*Petition for Protective Order*" was procedurally defective; and (2) whether we should now consider LRT's supplemental reply comments and other pleadings filed after the end of the pleading cycle in the reconsideration phase of this proceeding. As to the first issue, we affirm the Commission's previous finding that LRT's filing was procedurally defective. LRT contends that the Commission should have treated LRT's "*Petition for Protective*

¹⁰ LRT raises issues concerning Lockheed Martin's sale of Comsat interests in Inmarsat and its mobile satellite business, alleging violations of the ORBIT Act. We have considered and disposed of these issues in a separate proceeding. *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Order and Authorization*, FCC 01-369, 16 FCC Rcd 22,891, *Erratum*, 17 FCC Rcd 2147 (2001).

¹¹ Lockheed Martin's Motion to Strike LRT's Fourth Supplement to Reply at 3-5, dated September 17, 2001.

Order” as a request for special relief apart from the procedures established by the Commission’s public notice requesting comment on the merits. LRT’s contention is without merit. The Comsat-Lockheed Martin merger application was placed on public notice on April 4, 2000, establishing dates for comment and petitions and reply comments and oppositions.¹² LRT cannot, at its convenience, establish its own filing procedures outside of the public notice simply by labeling its pleading as something other than a comment or a petition to deny. LRT had sufficient notice and opportunity to file comments on a timely basis in accordance with the public notice. The Commission correctly found its “*Petition for Protective Order*” procedurally defective.

12. As to the second issue, with one exception, we find LRT’s multiple supplemental filings made subsequent to the end of the pleading cycle in the reconsideration phase of this proceeding unacceptable under our rules. While LRT has accompanied its 5 supplemental filings with motions to accept those comments, we are unpersuaded by the reasons advanced by LRT for accepting additional, often repetitive, filings.¹³ Under Section 1.3 of the rules, the Commission may waive its general rules of practice and procedure “for good cause shown.”¹⁴ As interpreted by the courts, this requires that a petitioner demonstrate that “special circumstances” warrant a deviation from the general rule and such a deviation will serve the public interest.¹⁵ In its motions to accept its various supplemental reply comments, LRT maintains each additional filing is the product of its own continuing investigation and research that has uncovered additional information that we should take into account. We conclude, however, that only the LRT supplemental reply of March 24, 2001 that points out that EMS has been a Commission licensee merits our consideration.¹⁶ Aside from that filing, LRT fails adequately to explain why it could not raise in its previous filings, the issues and arguments it poses, and the additional relief it requests in its supplemental replies. LRT attempts to submit information that already is a matter of public record or relates to issues not relevant to this proceeding. In addition, it repeats or expands upon previous arguments under the guise of submitting newly discovered information. The record is sufficient without the rest of LRT’s additional filings for us to reach conclusions upon reconsideration on those issues raised by LRT that are relevant to this proceeding. We therefore find that LRT has not demonstrated that good cause exists for the Commission to accept its supplemental replies. Thus, we deny LRT’s motions for failure to establish good cause to accept the additional filings.

B. Previously Considered Issues

13. In its *Phase II Order*, the Commission declined to consider several issues raised by LRT because the Commission previously disposed of them in its 1998 *Consolidated Order*. LRT contends that the Commission should not have relied upon the *Consolidated Order* as a basis for declining to consider further certain issues in this proceeding because the *Consolidated Order* was

¹² Public Notice Report No. SAT-00040, August 4, 2000.

¹³ In addition, LRT has ignored procedural requirements in our rules, including subscription and verification requirements and page limits. Some pleadings filed by LRT are unsigned. *See* 47 C.F.R. § 1.52 (2001). The supplemental reply comments all exceed the page limits specified in our rules. *See* 47 C.F.R. § 106(h)(1) (2001).

¹⁴ 47 C.F.R. § 1.3 (2001).

¹⁵ *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1970).

¹⁶ LRT Further Supplement with newly discovered evidence dated March 24, 2001.

subject to court appeal by LRT. This argument is without merit. First, a Commission order is effective unless stayed by the Commission or overturned or stayed by a court.¹⁷ The Commission properly relied upon its previous decision to dispose of issues that LRT chose to raise yet again in this proceeding. Second, the court has upheld the Commission's decision on the matter. The heart of LRT's previous claim before the Commission was that Comsat acquired control of BelCom, Inc. without prior Commission authorization under Section 208(c)(8) of the Satellite Act, as amended. LRT also contended that Comsat violated the Commission's structural separation policies.¹⁸ The Commission rejected these claims in its *Consolidated Order* and again on reconsideration of that order. The U.S. Court of Appeals for the Second Circuit has dismissed the LRT appeal to the Commission's *Consolidated Order* and has further dismissed LRT's motion to reinstate its petition before the Court.¹⁹ The ORBIT Act terminated Section 208(c)(8) of the Satellite Act on March 17, 2000.²⁰ There is no need to give further consideration to these settled issues in this or any other proceeding.

C. EMS Issues

14. EMS was an indirect subsidiary of Comsat from 1994 until its assets were recently sold.²¹ EMS manufactures and refurbishes pedestals for antennas, but does not provide any communications services.²² While Lockheed Martin initially stated that EMS was not a Commission licensee, it later confirmed information submitted in an LRT filing that EMS has held a Commission license since 1997 in the Marine Radio Service for an antenna to test marine radar

¹⁷ Once a Commission order is issued, it becomes effective on the date specified under the Commission's rules. 47 C.F.R. § 1.103 (2001). Section 1.106 of the rules dealing with petitions for reconsideration states that, without specific order of the Commission, the filing of a petition for reconsideration "shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission or operate in any manner to stay or postpone the effectiveness thereof." 47 C.F.R. § 1.106. Absent the issuance of a stay by the Commission or by a reviewing court, the order remains effective. Section 705 of the Administrative Procedure Act states that "when an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." 5 U.S.C. § 705 (2001). Section 705 further states that a reviewing court "may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve the status or rights pending conclusions of the review proceedings." LRT did not request a stay of the Commission's *Consolidated Order* from either the Commission or a court.

¹⁸ 47 U.S.C. § 721(c)(8).

¹⁹ *William L. Whitely, et.al. v. Federal Communications Commission*, Case No. 00-4207 (2d Cir. June 1, 2001) (The court dismissed the petition for review on June 1, 2001, for failure to prosecute. On June 25, 2001, the court dismissed LRT's motion to reinstate its petition for review. On August 24, 2001, the court denied LRT's request that it reconsider its order to dismiss LRT's original petition for review.) In that order, the court also granted the Commission's request to require LRT to pay the Commission's attorney's fees.

²⁰ 47 U.S.C. § 765(d).

²¹ EMS was a subsidiary of Radiation Systems, Inc. ("RSI") when RSI was acquired by Comsat in 1994. When the RSI business was sold in 1998, EMS became a wholly-owned subsidiary of Comsat General Corporation, a subsidiary of Comsat Corporation. The assets of EMS were sold to a subsidiary of DRS Technologies in August, 2001. Letter from Keith H. Fagen, Lockheed Martin Corporation to Secretary, FCC, dated October 3, 2001.

²² Lockheed Martin consolidated opposition, dated September 12, 2001, at 6-7.

systems.²³ On August 3, 2000, EMS entered a plea of guilty in the United States District Court for the Middle District of Florida for obstructing federal audits in violation of 18 U.S.C. § 1516.²⁴ EMS admitted in its plea agreement that, from 1988 to February 1999, EMS employees had concealed or altered documents or other information from government auditors that EMS employees were engaged in fraudulent activity, including falsification of actual costs of work performed for the U.S. Navy on radar pedestals.²⁵ The court accepted the EMS plea on August 22, 2000.²⁶ As part of the plea agreement, EMS agreed to pay the U.S. government \$7.5 million in restitution. The government also agreed not to charge Comsat, any successor corporation or any affiliate, or further charge EMS with any criminal offense relating to conduct giving rise to the EMS plea. On August 21, 2000, Comsat reported the EMS plea agreement to the Commission as part of amendments to the pending Comsat applications.²⁷

15. LRT contends that we should reconsider the Commission's *Phase II Order* because (1) Comsat allegedly failed timely to report to the Commission the full nature of the criminal investigation against EMS, and (2) this failure and the plea agreement entered into by EMS and the U.S. Government demonstrate that Comsat does not have the requisite character qualifications to remain a Commission licensee.

16. First, as to LRT's allegations that Comsat has failed to comply with Commission rules in reporting the EMS criminal inquiry, the Commission's rules do not impose upon licensees a requirement to report pending criminal investigations.²⁸ Moreover, no application filed in this proceeding by or on behalf of Comsat required such specific disclosure of pending criminal matters prior to conviction.²⁹ Consequently, we find no justification to grant LRT's request for reconsideration based upon Comsat's failure to disclose the pendency of the criminal investigation involving EMS.²⁹

²³ Lockheed Martin comments on LRT "Newly Discovered Evidence" dated April 6, 2001, at 3.

²⁴ *United States v. Electromechanical Systems, Inc.*, M.D. Case No. 8.00-CR-253-T-27A (M.D. Fla. 2000).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Letters to the Secretary, Federal Communications Commission, from Raymond G. Bender (Counsel for Comsat Corporation) accompanying amendments to earth station applications: 1) SES-MOD-19991115-0215700431; (2) SES-LRC-1998021700202 *et seq.*; (3) SES-MOD-2000313-00409 *et seq.*; (4) SES-LRC-19990330 *et seq.* and (5) SES-MOD-19990108-00020, dated August 21, 2000.

²⁸ *See* 47 C.F.R. § 1.65.

²⁹ *See* FCC Form 312, Application for Space and Earth Station Authorizations, requires an applicant or any party directly or indirectly controlling the applicant to inform the Commission of a conviction of a felony in any state or federal court.

²⁹ We note that Comsat initially represented that EMS was not a Commission licensee. Comsat concedes that it erred in this regard and that EMS has been, since September 1997, the licensee of a station in the Marine Radio Service. The Commission relies heavily on the representations of its licensees and expects all licensees to deal truthfully and accurately with the Commission at all times. While we find no basis at this time to question Comsat's basic qualifications or to grant LRT's request for reconsideration because of this incident, we will refer this matter to the Enforcement Bureau to consider whether there has been a

17. Second, we find that LRT's contention that we should reconsider the Commission's *Phase II Order* on the basis of Comsat's character qualifications as a licensee is without merit. LRT relies upon *Jefferson Radio* policy and other Commission decisions providing that assignment of broadcast licenses may be deferred at the Commission's discretion where there are character qualification issues.³⁰ LRT also relies upon the Commission's *Character Policy Statement*, as modified, regarding character qualifications of broadcast licenses and reporting requirements placed on them and applicants.³¹ While the *Character Policy Statement* is not specifically applicable to Comsat or EMS, the Commission has recognized that prior misconduct can have a material bearing on qualifications for non-broadcast as well as broadcast licensees and has assessed the relevance of such matters in non-broadcast license cases consistent with the principles set forth in the character policy statement.³² To the extent we are guided by these policies, we conclude that the EMS matter is not sufficiently compelling to reconsider and either rescind or impose conditions on the Comsat-Lockheed Martin merger.

18. The Commission's 1986 *Character Policy Statement* concerns misconduct that demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with Commission rules and policies.³³ The 1990 modification of the policy addresses the relevant non-FCC misconduct that the Commission, at its discretion, may consider in licensing decisions.³⁴ The Commission will consider a felony conviction as relevant to a licensee's character qualifications and an indication of its propensity to obey the law.³⁵ However, the Commission also takes into consideration mitigating factors, including willfulness, frequency, correctness, and seriousness of the misconduct as well as efforts to remedy the wrong and overall record of compliance with Commission rules and policies.³⁶ The EMS matter clearly entails non-FCC misconduct by a company that holds one non-broadcast FCC license associated with its business. The Plea Agreement, however, applies to EMS officers and employees only and specifically provides that no charges would be brought against Comsat or a successor company.³⁷ The Plea

possible violation of Section 1.17 of the Rules and, in light of the fact that the statute of limitations for forfeiture has passed, whether Comsat should be admonished.

³⁰ LRT Petition for Reconsideration, dated August 28, 2000, at 16-20, citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964) and *RKO General, Inc.* 3 FCC Rcd 5057, 5060-6 (1988) appeal dismissed *sub nom.*, *Los Angeles Television*, FCC 88-1693 (D.C. Cir. Aug. 4, 1989).

³¹ See *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, FCC 85-648, 102 FCC 2d 1179 (1986), recon. granted in part, denied in part, 1 FCC Rcd 21 (1986), appeal dismissed *sub nom.* *National Association for Better Broadcasting, v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1978) modified 5 FCC Rcd 3252 (1990) (*Modified Character Policy Statement*).

³² In re MCI Telecommunications Corp., *Memorandum Opinion and Order*, FCC 99-110, 14 FCC Rcd 11077 (1999).

³³ *Character Policy Statement* at 1190-91.

³⁴ *Modified Character Policy Statement* at 3252.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *United States v. Electromechanical Systems, Inc.*, M.D. Case No. 8.00-CR-253-T-27A (M.D. Fla. 2000).

Agreement also provides for EMS to undertake remedial actions within the company to prevent further misconduct.³⁸ We find that the EMS matter falls far short of giving rise to an issue of Comsat's overall qualifications as a Commission licensee. No other credible information has been provided to us to detract from Comsat's record of compliance with FCC rules and policies. The matter has been disposed of in both criminal and civil proceedings.³⁹ Nothing presented by LRT persuades us that the public interest will be served by rescinding or imposing new conditions on the Comsat-Lockheed Martin merger. Under these circumstances, there is no basis to apply the *Jefferson Radio* policy as requested by LRT. No further Commission action is required on this matter.

D. Other Matters

19. Finally, we note the following with regard to Comsat/Lockheed's claims that LRT and/or its members' primary aim is to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute involving the LRT members and Comsat. We take Comsat/Lockheed's claims very seriously. As described earlier in this order, there has been a documented pattern of conduct by LRT and/or its members with regard to Comsat and/or its successors or assigns that indeed appears to go beyond legitimate advocacy. In such cases, it is well-established that the Commission and its staff may impose sanctions upon parties participating in Commission proceedings if they file pleadings primarily for abusive purposes.⁴⁰ These sanctions could include restrictions on participation in Commission proceedings to prevent abuse of its processes.⁴¹ In considering challenges to pending applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests."⁴² The Commission has authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes.⁴³ Given the Commission's goal of encouraging participation in FCC proceedings, however, it only considers the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. In this regard, a pleading filed primarily to harass an applicant rather than to air legitimate, substantive objections relevant to the proceeding in which they are filed, is a situation that would justify a summary dismissal of such pleading.⁴⁴ Alternatively, should a party engage in such an abusive course of conduct before the agency, the

³⁸ *Id.*

³⁹ Settlement of a civil suit involving EMS brought under the *qui tam* provisions of the Federal False Claims Act, has been approved by the court. *United States ex rel. Beattie et al., v. Comsat Corp et al.*, Civil No. 96-966-CIV-T-24A (M.D. Fla. 2001).

⁴⁰ See, e.g., In re Application of Nationwide Communications, Inc., *Memorandum Opinion and Order*, FCC 98-7, 13 FCC Rcd 5654, 5655-56 (1998) (*Nationwide Communications*).

⁴¹ See, e.g., In re Applications of Radio Carrollton, et al., *Memorandum Opinion and Order*, Docket No. 19636-37, 69 FCC 2d 1138, 1148-55 (1978).

⁴² *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966).

⁴³ See the Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings, FCC 96-42, 11 FCC Rcd 3030 (1996).

⁴⁴ See *Nationwide Communications*, 13 FCC Rcd at 5655-56.

Commission may decide to require the party to obtain the Commission's prior permission to file documents based on a prior showing of public interest.⁴⁵ We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency.

IV. CONCLUSION

20. In view of the above discussion, we affirm the Commission's decision in its *Phase II Order* approving the Comsat-Lockheed Martin merger. We deny with prejudice LRT's petition for reconsideration of that decision.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Litigation Recovery Trust ("LRT") IS DENIED in all respects.

22. IT IS FURTHER ORDERED that LRT's September 28, 2000 Motion to Accept the Late Filed first supplement to its reply comments and its October 1, 2000 Motion to Accept Beyond Page Limit ARE DENIED.

23. IT IS FURTHER ORDERED that LRT's October 12, 2001 Motion to Accept the second supplement to its reply comments IS DENIED.

24. IT IS FURTHER ORDERED that LRT's September 8, 2001 Motion to Accept the third supplement to its November 18, 2000 reply comments IS DENIED.

25. IT IS FURTHER ORDERED that LRT's December 2, 2000 Motion to Accept its Petition for Additional Issue to Review IS DENIED.

26. IT IS FURTHER ORDERED that LRT's March 24, 2001 Motion to Accept its further supplement with newly discovered evidence IS GRANTED.

27. IT IS FURTHER ORDERED that LRT's September 8, 2001 Motion to Accept the fourth supplement to its reply comments IS DENIED.

28. IT IS FURTHER ORDERED that LRT's Request to Withdraw its Petition for Clarification and for Correction of Order IS GRANTED insofar as LRT alleges that Comsat violated the Commission's *ex parte* rules, and the Petition is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁵ See *In re Martin-Trigona*, 592 F.Supp. 1566, 1568 (D. Conn. 1984); *In re Notice to John Cervase*, Letter from Vincent J. Mullins, Secretary, FCC, by Direction of the Commission, *Notice*, FCC 75-891, 54 FCC 2d 1039 (1975).